Dissimilar Similarities

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Court reforms are never innocent. As the third power, courts depend on their independence from the two others in order to perform their function as guardians of the rule of law. At the same time, they depend on the legislative and executive powers for their funding, and for the legal framework that they operate within.

In the EU, most attention is paid to the judicial reforms underway in Hungary and Poland, which threaten judicial independence and the rule of law. The concurrent judicial reforms in Norway and Slovakia have received almost no attention. Although quite dissimilar to the former set, the latter underscore that institutional reforms cannot be viewed apart from their social and political settings.

The Norwegian Reform

There is currently a hot debate in Norway on structural reform of the court system. At the end of last year, a Government-appointed commission proposed to reduce the number of first-instance courts from 60 to 22. The government sent this proposal to public review in the spring, and proposed a bill to the Parliament in October to change the law in order to give the Government and court administration the necessary powers to see this reform through.

The reform is supposed to increase the efficiency of the courts. At the same time, it will lay the ground for larger and thereby stronger and more competent bodies of trained judges, who will support each other's professional development. It will also make specialization possible, lead to a more even distribution of cases, and lower the time needed to get a case through the entire process, from filing to decision.

The proposal is strongly supported by the court administration, the judges' association and many professional communities. However, it also has strong critics. Even before the proposal was submitted to the Parliament, a majority of the MPs stated that they would not support it.

Critics claim that the proposals disregard the scepticism of many people against centralization and that it will weaken the rule of law. Most of the existing courts will be made subordinate departments under larger units. They fear that these units, with their significance for the distribution of legal services and access to courts, will disappear over time. They also fear fewer and more powerful court presidents, as opposed to the decentralized system that is well established in the Norwegian legal tradition.

In response, some MPs proposed a private bill with a proposal to perform an evaluation of the court administration and another bill to include a provision in the law, stating that no structural reform of courts could be performed without the

consent of the Parliament. In Norway, the practice to include the Parliament in such matters presently rests only on non-binding custom. These bills did not get majority support. Proponents of the reform, in the end, have been more convincing.

Meanwhile, in Slovakia

At the same time that these issues are debated in Norway, a debate over a very similar proposal is taking place in Slovakia. On 5 November, the Slovakian Minister for Justice announced a new court-map for Slovakia.

Likewise, this reform will reduce the number of first-instance courts from 54 to 30, and the number of appellate courts from 8 to 3. The primary object of the reform is also to improve the effectiveness of the courts. The Minister of Justice plans to have at least three judges at each court for every kind of agenda. This ambition seems to show the Minister's priorities: the fight against corruption and the support of transparency. It seems to be reactionary to previous years' failures.

Further goals are to bring better accessibility, faster proceedings, higher quality of decisions, transparency, and effectiveness. Towards this end, the reform considers cultural and infrastructural relations in the regions of the courts' locations.

The proposal coincides with other significant reforms put forward by an active Minister of Justice. She recently proposed several amendments to the judiciary, which are in the Parliament right now. Among them is an amendment on judicial immunity. The judges ought not to enjoy immunity for their actions if they commit a crime. Furthermore, she has proposed clarifying the rule on judges' retirement age (currently is 65). Her revisions also include a detailed procedure on the property declaration of judges.

Here, it is necessary to say that the Minister's proposals do not create a new legal situation. All these instruments already existed in the law. However, their broad interpretation created problems leading to avoidance. An example could be a broad interpretation of the retirement clause by the Council of the Judiciary, which has led to arbitrary decision-making favourable to some judges.

The background for the Minister's proposals is the low level of trust that the Slovakian judiciary enjoys. Recently uncovered scandals in the judiciary have sped up the reform activity. This spring, 13 judges were arrested by the police under accusations of corruption. Later in the summer and fall, six others joined them. The ongoing investigation has uncovered inappropriate relations that these judges held with either business, politicians or advocates and delivered decisions on request. These investigations have caused the Slovak judiciary to experience a voluntary exodus of judges, which has not been seen since 1989.

Differences from Hungary and Poland

Court reforms, dissatisfaction, and lack of trust are endemic in many of the EU's new Member States. In many of them, notably in Hungary and Poland, reforms

have been used by the parties in power as an occasion to anchor loyal judges, in order to entrench their hold on power and ensure support for their policies. This has led to reactions from the EU and Council of Europe on the grounds that judicial independence and the rule of law are being undermined.

The situation in Slovakia is different. Here, the reforms to develop an independent judiciary after 1990 were highjacked by a group of corrupt judges under the leadership of Supreme Court judge Stefan Harabin. The introduced reforms mainly aimed at establishing an outer layer of independence, to satisfy EU membership requirements. The inner layers, those governing common political interests, ideas, social identity, family and professional ties and even patron–client obligations between judges and other actors, were left untouched. In effect, the reforms made it possible for judges to exploit their newly-gained immunity for their own personal gains.

It has taken long for the Slovak state to regain control over the judicial system and to start finding a balance between independence and accountability. An added obstacle for reformers is the difficult political landscape, as populist movements threaten to take control over government. Nevertheless, based on long-term reservations from EU institutions and the Council of Europe focused on the rule of law and the independence of the judiciary, as well as by long-term distrust of the Slovak population in the judiciary, it seems that reforms of the Slovak judiciary may be welcomed.

Context-dependency of judicial reforms

It is crucial to safeguard against judicial reforms becoming instruments for those seeking to undermine the judiciary's independence. Hungary and Poland's situations show that this is a real possibility – something that judges in Slovakia and Norway have pointed out in the course of their ongoing reforms. Simultaneously, the latter two examples show that formal institutional arrangements and reforms cannot be viewed apart from their social and political settings.

It is equally important not to let unfounded fears undermine well-reasoned and needed institutional reforms. The reforms of the court structure in both Norway and Slovakia look sincere in their ambitions for increasing the effectiveness of the courts for the wellbeing of society. The intentions in both cases recognize better working conditions for judges and improved access to courts for the citizenry.

Throughout either structural reform, stable institutions are necessary to prevent particular players from implementing their private instead of public interest. Both Norway and Slovakia have a long path ahead, if the proposals get through their national assemblies. Apparently, the institutions enjoy greater trust in Norway than in Slovakia. Therefore, we might expect that the implementation of the reform will be experienced differently by the judiciary as well as the people in the two countries. In the last 100 years, there have been more legal and political lines crossed in Slovakia than in Norway. Nevertheless, the final word on both cases in this article, even

though set in different institutional conditions, is: "*Let's hope no one crosses the lines.*"

The authors are engaged in the project Judges under Stress JuS – the Breaking Point of Judicial Institutions at the Institute of Private law. The project seeks answers to how rulers seek judicial compliance with authoritarian measures, how judges react to such measures, and what are the conditions under which an independent judiciary breaks down?
